

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
The Electric Power Board and City of Wilson	)	WCB Docket Nos. 14-115 and 14-116
Petitions, Pursuant to Section 706 of the	)	
Telecommunications Act of 1996, Seeking	)	
Preemption of State Laws Restricting the	)	
Deployment of Certain Broadband Networks	)	
	)	

**COMMENTS OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES**

**I. INTRODUCTION**

The North Carolina League of Municipalities (“League”) is a membership organization of over 540 municipalities and hereby files these comments in response to the Federal Communication Commission’s (“Commission”) request, released July 28, 2014, in the above-captioned proceeding. The League commends the Commission for actively seeking input from *all* stakeholders in an effort to better understand the value of local broadband initiatives. As the Commission noted in challenging broadband providers and state and municipal community leaders to come together to develop at least one gigabit community in all 50 states by 2015: “The U.S. needs a critical mass of gigabit communities nationwide so that innovators can develop next-generation applications and services that will drive economic growth and global competitiveness.” To be able to compete in a global economy, building advanced communications networks and providing access should be explored by all stakeholders, including local governments.

With the public and private sectors working towards the goal of increased broadband access, the United States will be able to take full advantage of the opportunities that advanced communications networks can create in virtually every area of life. In addition to private sector efforts, federal, state, and local government efforts are underway across the nation to deploy both private and public broadband infrastructure to stimulate and support economic development and job creation. But such efforts by the public sector will see barriers, in some areas, by state laws

that prohibit or restrict municipalities from engaging with private broadband providers, or developing themselves, if necessary, advanced broadband infrastructure. These barriers will impact a local government's ability to provide vital broadband services that would stimulate local businesses' development, foster work force retraining, and boost employment in economically underachieving areas. At the very time local governments across America are ready, willing, and able to do their share to bring affordable, high-capacity broadband connectivity to all Americans, state barriers to public broadband are counterproductive to the achievement of national goals of global economic development. State laws restricting or prohibiting municipal efforts to provide broadband services - like that passed by North Carolina in 2011 – stifle economic growth by preventing competition and inhibiting job creation.

The League urges the Commission to preempt state laws that prohibit or restrict public broadband projects or public/private broadband partnerships and submits these comments in full support of the dual Petitions of the City of Wilson, North Carolina (“Wilson”)<sup>1</sup> and the Electric Power Board of Chattanooga, Tennessee (“EPB”)<sup>2</sup> (collectively “Petitioners”) filed on July 24, 2014 and released for public comment on July 28, 2014, in the above-captioned proceedings.

## **II. IMPORTANCE OF BROADBAND ACCESS AND SUPPORT FOR LOCAL BROADBAND INITIATIVES**

The League strongly supports and encourages the Commission to preempt these state laws to the extent requested in the respective Petitions on the grounds that they create artificial barriers to broadband infrastructure investment, deployment, competition and innovation, by severely restricting and unreasonably delaying the options available to local communities to obtain 21st Century broadband infrastructure and services for their businesses and residents. Broadband is critical infrastructure that affects economic development, education, public safety and businesses. Broadband access has empowered citizens and local communities by increasing civic participation, facilitating learning, and strengthening neighborhood businesses. With the

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<sup>1</sup> See Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by City of Wilson, North Carolina, WC Docket No. 14-115 (filed July 24, 2014) (Wilson, NC Petition).

<sup>2</sup> See Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by Electric Power Board, Chattanooga, Tennessee, WC Docket No. 14-116 (filed July 24, 2014) (EPB Petition).

availability of the Internet, city, county and state governments are live streaming council meetings for public viewing, publishing text of resolutions and other official documents, and communicating with their constituents directly online.<sup>3</sup> Students can communicate with their teachers and with one another and can access immense databases of information from home, schools, libraries, and even neighborhood coffee shops.<sup>4</sup> Through the availability of robust broadband services, small businesses and entrepreneurs can advertise and sell their products and services online and compete with much larger businesses on a level playing field.<sup>5</sup> Without a doubt, broadband brings to communities and residents both a stronger economy and a stronger democracy.

In the 21<sup>st</sup> Century, high-speed internet access is almost as important to a community's social and economic health as electricity, water and sewers are. Availability of non-traditional broadband avenues is particularly important to underdeveloped and economically distressed areas. Ensuring that all Americans have affordable, reliable and timely access to advanced telecommunications capabilities is one of the greatest infrastructure challenges of our time. For these reasons, the League has steadfastly advocated for an increase in broadband access.

### **III. LOCAL EXAMPLE**

Numerous plans that were in the works by various local North Carolina communities to build fiber networks for retail business and residential use ground to a halt with the passage of N.C. Session Law 2011-84 (also known as "H129"), which created a new Article 16A of N.C. General Statutes Chapter 160A entitled "Provision of Communication Services by Cities." Communities throughout the state knew that North Carolina's "Level Playing Field" law was nothing of the sort. As Wilson's Petition underscores, H129 was a bill sponsored by the incumbent providers, and in no manner subjected these companies to the numerous and varied

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<sup>3</sup> The City of Santa Monica, CA has built a fiber network which has lowered costs for telecommunications. In addition to the economic benefits of retaining existing and attracting new businesses, their network allows for greater engagement with the community through online services and information: <http://www.smgov.net/video/>.

<sup>4</sup> The Town of Mansfield, CT provides free wireless Internet access in public school buildings as well as in most of the indoor and outdoor areas of the Mansfield Public Library, Community Center, Senior Center, and Town Hall: <http://www.mansfieldct.gov/content/1914/2778/4151.aspx>.

<sup>5</sup> Lit San Leandro is a public-private partnership between the City of San Leandro and San Leandro Dark Fiber LLC. Lit San Leandro owns and operates the switch and routing facilities that bring high-speed Internet service and as a result is bringing tech start-ups and entrepreneurs to the community: [http://www.mercurynews.com/business/ci\\_26283395/san-leandro-entices-tech-startups-entrepreneurs](http://www.mercurynews.com/business/ci_26283395/san-leandro-entices-tech-startups-entrepreneurs).

restrictions that in part and in whole effectively prohibit local communities from deploying modern broadband networks and services to their citizens.<sup>6</sup> In addition, the law had the collateral effect of suppressing the desire of numerous communities to even creatively engage in public-private partnerships for fear of exposing themselves to a legal challenge by any incumbent hungry to suppress potential local broadband options, and finding ample provisions under which to do so using the numerous ambiguities in their law. As such, laws like those in North Carolina have unreasonably delayed and suppressed local options and competition, broadband deployment and innovation.

Wilson is one of the few towns in the state that offers high-speed Internet service to residents and businesses, and the abovementioned legislation has limited its ability to expand its data service to nearby communities that have requested the connection. Its municipal broadband data service offers residential Internet speeds up to 1 gigabit, which is 20 times faster than the local private provider's household Internet speed. When H129 was enacted by the legislature three years ago, Wilson's \$33 million broadband service was in the process of being built out on the financial assumption of reaching a defined geographic base of potential customers. However, Wilson's natural expansion was limited by the enactment of H129, preventing its ability to insure a return on its investment.

As Wilson has carefully articulated in its Petition, N.C. Gen. Stat. Chapter 160A, Article 16A must be preempted in its entirety.<sup>7</sup> The law contains multiple tiers of barriers and restrictions, including among others rate regulations, limited funding options, and census-block speed litmus tests -- so that removing one (such as the geographical service area limit) in no manner frees communities to engage all options within their resources. In North Carolina, there are large areas that do not provide sufficient return on investment necessary to encourage deployment of private broadband infrastructure. Residents and businesses of those communities need access to internet just the same as the rest of the state's residents.

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<sup>6</sup> Wilson, NC Petition at page 14, pages 27-38.

<sup>7</sup> Wilson, NC Petition at pages 25-39.



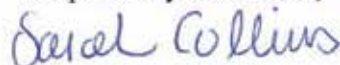
We strongly support the preemption of North Carolina's broadband law on the grounds that it creates artificial barriers to broadband infrastructure investment, deployment, competition and innovation and ultimately leaves North Carolinians without access to affordable, reliable internet access unnecessarily.

#### IV. CONCLUSION

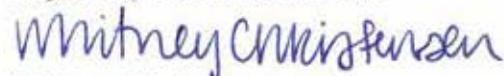
These comments underscore the value of community broadband networks and role of local governments in deploying them because they best understand the day to day activities and needs of their citizens. These networks allow city leaders to improve the way they engage with their residents, enhance public services such as public safety, education, libraries and other public facilities, and foster innovation and local economic development. As such, local governments should have the authority and control to deploy broadband networks to meet the needs of the people they serve.

For the reasons outlined above, the League urges the Commission to continue to work with all stakeholders to develop rules and policies that restore local control and authority in community broadband initiatives. The choice to build community-funded broadband systems should be left to the local communities. The League asks that you honor the request of its member city, the City of Wilson, to remove state legislative barriers to local government broadband expansion in North Carolina and throughout the country. Please permit local communities to address their own broadband needs and allow local government to play a role in local infrastructure decisions. We look forward to working with all stakeholders as the Commission considers these petitions.

Respectfully submitted,



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